



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0956]

RIN 1625-AA11

Regulated Navigation Area; Portsmouth Naval Shipyard, Piscataqua River, Portsmouth, NH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) on the Piscataqua River near Portsmouth, NH. This temporary final rule places speed restrictions on all vessels transiting the navigable waters of the Piscataqua River, Portsmouth, NH near the Portsmouth Naval Shipyard between Henderson Point Light on Seavey Island and Badgers Island Buoy 14. This rule is necessary to provide for the safety of life on the navigable waters during ongoing dive operations.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 5:00 p.m. on December 6, 2013. For the purposes of enforcement, actual notice will be used from 7:00 a.m. on November 21, 2013 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2013-0956. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Junior Grade Elizabeth V.

Morris, Waterways Management Division at Coast Guard Sector Northern New England, telephone 207-767-0398, e-mail

[Elizabeth.V.Morris@uscg.mil](mailto:Elizabeth.V.Morris@uscg.mil); or Lieutenant Myles Greenway, Waterways Management at Coast Guard First District, telephone 617-223-8385, e-mail [Myles.J.Greenway@uscg.mil](mailto:Myles.J.Greenway@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<u>Federal Register</u>

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard was not notified of the need for this rule until 31 October 2013, and the Portsmouth Naval Facility will begin diving operations in this area within a short timeframe making publication of a NPRM and Final Rule impracticable.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the reasons discussed in the preceding paragraph, delaying the effective date of this rule would be impracticable.

### B. Basis and Purpose

Under the Ports and Waterways Safety Act, 33 U.S.C. § 1221 et. seq., the Coast Guard has the authority to establish RNAs in

defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety.

As part of ongoing ship construction projects at the Portsmouth Naval Shipyard, divers will be working on the hull of a vessel for approximately two weeks beginning on November 21, 2013. Unexpected and uncontrolled movement of the vessel due to wake while divers are in the water would create a significant risk of serious injury or death to vessel workers and divers. In order to ensure the safety of vessel workers and divers during the period of ship construction work, the Coast Guard is creating a regulated navigation area to limit the speed, and thus wake, of all vessels operating in the vicinity of the shipyard.

### C. Discussion of Rule

This action will establish a temporary Regulated Navigation Area that places speed restrictions on all vessels transiting the navigable waters on the Piscataqua River, Portsmouth, NH near the Portsmouth Naval Shipyard between Henderson Point Light on Seavey Island and Badgers Island Buoy 14 when necessary for the safety of navigation during periods of dive operations. All vessels operating in this area must proceed with caution; operate at no more than 5 knots and in a manner so as to produce no wake. Diving operations and other

vessel construction may occur at any time, day or night. This regulated navigation area will provide for the safety of the divers and others working in the area as wake from passing vessels could cause the ship to move erratically and unexpectedly, injuring the divers and their support crews.

The Captain of the Port Sector Northern New England will cause notice of enforcement or suspension of enforcement of this regulated navigation area to be made by all appropriate means in order to affect the widest distribution among the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. In addition, Captain of the Port Sector Northern New England maintains a telephone line that is staffed 24 hours a day, seven days a week. The public can obtain information concerning enforcement of the regulated navigation area by contacting Sector Northern New England Command Center at (207) 767-0303.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and

Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under these Orders.

The Coast Guard determined that this rulemaking will not be a significant regulatory action for the following reasons: vessel traffic will only be required to operate at no-wake speeds within the RNA and the RNA covers only a small portion of the navigable waterway. Advanced public notifications will also be made to local mariners through appropriate means, which might include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial

number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the portion of the Piscataqua River affected by this rule between August 5, 2011 and September 5, 2011.

This RNA will not have a significant economic impact on a substantial number of small entities for all the reasons discussed in the REGULATORY PLANNING AND REVIEW section above.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the

Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act



The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of

the Instruction because it involves the establishing of a regulated navigation area. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0956 to read as follows:

§165.T01-0956 Regulated Navigation Area; Portsmouth Naval Shipyard, Piscataqua River, Portsmouth, NH.

(a) Location. The following area is a Regulated Navigation Area (RNA): All navigable waters, surface to bottom, on the Piscataqua River, Portsmouth, NH and Kittery, ME near the Portsmouth Naval Shipyard between 43°04'29.319"N, 070°44'10.189"W (Henderson Point Light 10, LLNR 8375) on Seavey

Island and 43°04'51.951"N, 070°45'21.518"W (Badgers Island Buoy 14, LLNR 8405).

(b) Regulations. (1) The general regulations contained in 33 CFR 165.10, 165.11 and 165.13 apply.

(2) In accordance with the general regulations, the following restrictions apply to all vessels operating within the regulated area noted above.

(i) No vessel may operate in this regulated area at a speed in excess of five knots.

(ii) All vessels must proceed through the area with caution and operate in such a manner as to produce no wake.

(iii) Vessels operating within the regulated navigation area must comply with all directions given to them by the Captain of the Port Sector Northern New England or his on-scene representative.

(iv) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative may be on a Coast Guard vessel, State Marine Patrol vessel or other designated craft, or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. Members of the Coast Guard Auxiliary or Naval Harbor Security Patrol may be present to inform vessel operators of this regulation.

(v) For purposes of navigational safety, the Captain of the Port or on-scene representative may authorize a deviation from this regulation.

(c) Effective and enforcement period. (1) This regulated navigation area is effective and will be enforced from 7:00 a.m. on November 21, 2013 until 5:00 p.m. on December 6, 2013.

(2) Notice of suspension of enforcement: The Captain of the Port Sector Northern New England may temporarily suspend enforcement of the regulated navigation area. If enforcement of the zone is temporarily suspended, the Captain of the Port Sector Northern New England will cause a notice of the suspension of enforcement of this regulated navigation area to be made by all appropriate means. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. Such notification will include the date and time that enforcement is suspended as well as the date and time that enforcement will resume.

(3) Violations of this regulated navigation area should be reported to the Captain of the Port Sector Northern New England, at (207) 767-0303 or on VHF-Channel 16. Persons in violation of this regulated navigation area may be subject to civil and/or criminal penalties.

Dated: November 15, 2013

V.B. Gifford,  
Captain, U.S. Coast Guard  
Acting Commander, First Coast Guard District

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Date: 11/29/2013]